

2015 Regular Session

HOUSE BILL NO. 271

BY REPRESENTATIVE BILLIOT

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

PROBATION: Extends the length of probation for defendants participating in drug court or sobriety court

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Articles 893(A), (B)(1)(a)(iv)(aa) and  
3 (bb), and (B)(1)(b) and 894(A)(6) and (7), (B)(1), and (D)(1), relative to probation;  
4 to provide relative to the duration of probation for a defendant participating in a drug  
5 division probation program or a driving while intoxicated or sobriety court program;  
6 to increase the maximum duration of the probation period for these defendants to  
7 eight years; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Code of Criminal Procedure Articles 893(A), (B)(1)(a)(iv)(aa) and (bb),  
10 and (B)(1)(b) and 894(A)(6) and (7), (B)(1), and (D)(1) are hereby amended and reenacted  
11 to read as follows:

12 Art. 893. Suspension and deferral of sentence and probation in felony cases

13 A. When it appears that the best interest of the public and of the defendant  
14 will be served, the court, after a first or second conviction of a noncapital felony,  
15 may suspend, in whole or in part, the imposition or execution of either or both  
16 sentences, where suspension is allowed under the law, and in either or both cases  
17 place the defendant on probation under the supervision of the division of probation  
18 and parole. The court shall not suspend the sentence of a conviction for a crime of  
19 violence as defined in R.S. 14:2(B)(1), (2), (3), (4), (5), (9), (10), (11), (12), (13),  
20 (14), (15), (16), (18), (20), (21), (22), (26), (27), or (28), or of a second conviction

1 if the second conviction is for a violation of R.S. 14:73.5, 81.1, or 81.2. ~~The~~ Except  
 2 as provided in Subitems (B)(1)(a)(iv)(aa) and (bb) of this Article, the period of  
 3 probation shall be specified and shall not be less than one year nor more than five  
 4 years. The suspended sentence shall be regarded as a sentence for the purpose of  
 5 granting or denying a new trial or appeal. Supervised release as provided for by  
 6 Chapter 3-E of Title 15 of the Louisiana Revised Statutes of 1950 shall not be  
 7 considered probation and shall not be limited by the five-year period for probation  
 8 provided for by the provisions of this Paragraph.

9 B.(1)(a) The court may suspend, in whole or in part, the imposition or  
 10 execution of the sentence when the following conditions exist:

11 \* \* \*

12 (iv) The court orders the defendant to do any of the following:

13 (aa) Enter and complete a program provided by the drug division of the  
 14 district court pursuant to R.S. 13:5301; et seq. When a case is assigned to the drug  
 15 division probation program pursuant to the provisions of R.S. 13:5301 et seq., with  
 16 the consent of the district attorney, the court may place the defendant on probation  
 17 for a period of not more than eight years if the court determines that successful  
 18 completion of the program may require that period of probation to exceed the five-  
 19 year limit. If necessary to assure successful completion of the drug division  
 20 probation program, the court may extend the duration of the probation period. The  
 21 period of probation as initially fixed or as extended shall not exceed eight years.

22 (bb) Enter and complete an established ~~DWI~~ driving while intoxicated court  
 23 or sobriety court program, as agreed upon by the trial court and the district attorney.  
 24 When a case is assigned to an established driving while intoxicated court or sobriety  
 25 court program, with the consent of the district attorney, the court may place the  
 26 defendant on probation for a period of not more than eight years if the court  
 27 determines that successful completion of the program may require that period of  
 28 probation to exceed the five-year limit. If necessary to assure successful completion  
 29 of the drug division probation program, the court may extend the duration of the

1 probation period. The period of probation as initially fixed or as extended shall not  
2 exceed eight years.

3 \* \* \*

4 (b) When suspension is allowed under this Paragraph, the defendant shall be  
5 placed on probation under the supervision of the division of probation and parole.  
6 The period of probation shall be specified and shall not be less than two years nor  
7 more than five years, except as provided in Subitems (a)(iv)(aa) and (bb) of this  
8 Subparagraph. The suspended sentence shall be regarded as a sentence for the  
9 purpose of granting or denying a new trial or appeal.

10 \* \* \*

11 Art. 894. Suspension and deferral of sentence; probation in misdemeanor cases

12 A.

13 \* \* \*

14 (6) When a case is assigned to the drug division probation program pursuant  
15 to the provisions of R.S. 13:5304, with the consent of the district attorney, the court  
16 may place the defendant on probation for a period of not more than ~~four~~ eight years  
17 if the court determines that successful completion of the program may require that  
18 the period of probation exceed the two-year limit. If necessary to assure successful  
19 completion of the drug division probation program, the court may extend the  
20 duration of the probation period. The period of probation as initially fixed or as  
21 extended shall not exceed ~~four~~ eight years.

22 (7) When a case is assigned to an established driving while intoxicated court  
23 or sobriety court program certified by the Louisiana Supreme Court Drug Court  
24 Office, the National Highway Traffic Safety Administration, or the Louisiana  
25 Highway Safety Commission, with the consent of the district attorney, the court may  
26 place the defendant on probation for a period of not more than ~~four~~ eight years if the  
27 court determines that the successful completion of the program may require that the  
28 period of probation exceed the two-year limit. If necessary to assure successful  
29 completion of the driving while intoxicated court or sobriety court program, the court

1           may extend the duration of the probation period. The period of probation as initially  
2           fixed or as extended shall not exceed ~~four~~ eight years.

3                         B.(1) When the imposition of sentence has been deferred by the court, as  
4           authorized by this Article, and the court finds at the conclusion of the period of  
5           deferral that the defendant has not been convicted of any other offense during the  
6           period of the deferred sentence, and that no criminal charge is pending against him,  
7           the court may set the conviction aside and dismiss the prosecution. However, prior  
8           to setting aside any conviction and dismissing the prosecution for any charge for  
9           operating a vehicle while intoxicated, the court shall require proof in the form of a  
10          certified letter from the Department of Public Safety and Corrections, office of motor  
11          vehicles, that the requirements of Paragraph ~~A(5)~~ (A)(5) of this Article have been  
12          complied with.

13   \*       \*       \*

14                         D.(1) The Department of Public Safety and Corrections, office of motor  
15          vehicles, shall serve as a repository for the records referred to in Paragraph ~~A(5)~~  
16          (A)(5) of this Article for any plea for operating a vehicle while intoxicated entered  
17          pursuant to the provisions of this Article. The department shall maintain records for  
18          a period of ten years. The department shall respond by certified mail to a request by  
19          any court, prosecuting agency, or defendant seeking certified copies of the records  
20          or verification that the records are in the possession of the department.

21   \*       \*       \*

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 271 Original

2015 Regular Session

Billiot

**Abstract:** Increases the maximum duration of the probation period for a person participating in a drug division probation program or a driving while intoxicated or sobriety court program to eight years.

Present law (C.Cr.P. Art. 893(A) and (B)) authorizes the court to suspend the imposition or execution of a sentence for a defendant convicted of certain felony offenses and place the defendant on probation for a period not to exceed five years.

Present law (C.Cr.P. Art. 894(A)(1)) authorizes the court to suspend the imposition or execution of a sentence for a defendant convicted of certain misdemeanor offenses and place the defendant on probation for a period not to exceed two years.

Present law (C.Cr.P. Art. 894(A)(6) and (7)) provides if a case is assigned to a drug division probation program or to an established driving while intoxicated or sobriety court program for a misdemeanor offense, with the consent of the district attorney, the court may place the defendant on supervised probation for a maximum of four years if the court determines that successful completion of the program may require that the period of probation exceed the two-year limit.

Present law (R.S. 13:5304) authorizes defendants who commit certain alcohol- or drug-related offenses to participate in a drug division probation program or a driving while intoxicated or sobriety court program when certain eligibility requirements are met. If accepted into the program, the defendant must enter a plea of guilty to the charge, the defendant's sentence is suspended, and the defendant is placed on supervised probation under the usual conditions of probation and under special conditions of probation related to the completion of such substance abuse treatment programs as are ordered by the court.

Present law (R.S. 13:5304) further provides that if the defendant successfully completes the probation program, the court may set aside the conviction and the prosecution may be dismissed in accordance with the provisions of present law.

Proposed law (C.Cr.P. Art. 893(A) and (B)) increases the maximum duration of the probation period for a person participating in a drug division probation program or a driving while intoxicated or sobriety court program for a felony offense from five years to eight years.

Proposed law (C.Cr.P. Art. 894(A)(6) and (7)) increases the maximum duration of the probation period for a person participating in a drug division probation program or a driving while intoxicated or sobriety court program for a misdemeanor offense from four years to eight years.

(Amends C.Cr.P. Arts. 893(A), (B)(1)(a)(iv)(aa) and (bb), and (B)(1)(b) and 894(A)(6) and (7), (B)(1), and (D)(1))